

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA  
SOUTHERN DIVISION**

CHRISTOPHER ALTHOUSE,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation,

Defendant.

) Case No.: 3:19-cv-00551-LRH-WGC  
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)  
)

**JOINT PRETRIAL ORDER**

**I.**

This is a civil action for personal injuries incurred while Plaintiff CHRISTOPHER ALTHOUSE was acting within the course and scope of his employment as a truck driver with Defendant UNION PACIFIC RAILROAD COMPANY wherein Plaintiff seeks damages for 1) past and future medical costs; 2) past and future lost wages and benefits; 3) lost earning capacity; 4) past and future loss of enjoyment of life; 5) past and future pain and suffering; and 6) past and future mental anguish.

Plaintiff contends Defendant:

1. Failed in its duty to provide reasonably safe tools and equipment.
2. Failed in its duty to warn employees of unsafe working conditions.
3. Failed in its duty to warn employees of any unusual risks or dangers or unexpected hazards or departures from the general customs and practices of the railroad.
4. Failed in its duty to inspect and maintain its property to ensure it is free of hazards.
5. Failed in its duty to use reasonable care to provide a safe place to work.
6. Failed in its duty to promulgate and enforce safety rules and safe policies and procedures.
7. Failed in its duty to provide sufficient help to perform the assigned tasks.
8. Failed in its duty to comply with Defendants' own safety rules, policies and procedures as relates to the tasks workers are instructed to perform.
9. Failed to ensure workers are safe from harmful acts of others.

10. Failed in its duty to investigate, implement and institute reasonably safe methods and procedures for the inspection, maintenance, correction and repair of work sites and equipment, as well as other duties the breach of which may be revealed by discovery.

Defendant contends:

1. Defendant was not negligent as alleged by Plaintiff.
2. Defendant could not reasonably foresee the happening of the subject accident.
3. Plaintiff was negligent.
4. Some of Plaintiff's injuries are the result of pre-existing and/or chronic conditions.
5. Plaintiff failed to reasonably mitigate his damages.

## II.

Statement of jurisdiction: The incident giving rise to this lawsuit occurred in the County of Lyon, State of Nevada. At all relevant times, Defendant was and now is a duly-organized and existing corporation doing business in the State of Nevada. At all relevant times, Defendant was and now is a common carrier by railroad in the County of Lyon, State of Nevada, and engaged in interstate commerce within the meaning of Federal Employers' Liability Act ("FELA"). Plaintiff brings this action against Defendant under the provisions of 45 U.S.C. §§51 to 60, *et seq.*, of the FELA. Under the terms of the FELA, this Court has jurisdiction pursuant to 45 U.S.C. §56. (concurrent jurisdiction).

## III.

The following facts are admitted by the parties and require no proof:

1. Defendant is a Delaware corporation authorized to do business in the State of Nevada.
2. Plaintiff is an individual residing in Fernley, Nevada.
3. At all relevant times, Plaintiff was employed by Defendant.
4. At all relevant times, Defendant is and was a common carrier by railroad in the County of Lyon, State of Nevada, and other counties and states.
5. At all relevant times, Defendant is and was engaged in interstate commerce within the meaning of FELA.

1 6. The herein Court has jurisdiction.

2 7. Venue is proper in this Court.

3 8. Plaintiff was employed as a truck driver by Defendant on December 13, 2018.

4 **IV.**

5 The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

6 1. The incident giving rise to this lawsuit occurred in the County of Lyon, State of Nevada.

7 2. At all relevant times, Plaintiff's job duties were in furtherance of and/or directly or closely or  
8 substantially affected said interstate commerce within the meaning of FELA.

9 3. At all relevant times, Plaintiff was acting within the course and scope of his employment with  
10 Defendant.

11 4. On or about December 13, 2018, at Fernley, Nevada, between milepost 273 and 274 on the  
12 mainline, Plaintiff was employed as a truck driver by Defendant and was being utilized as a  
13 hydraulic saw operator cutting mainline rail in order to repair rail defects, which involved among  
14 other things cutting out old rail and replacing it with new rail. Work truck #59720 was parked on  
15 the access road.  
16  
17

18 **V.**

19 The following facts are the issues of fact to be tried and determined at trial:

20 1. At the time of the incident, was Plaintiff's back toward work truck #59720 in order to perform  
21 the assigned work?

22 2. At the time of the incident, did Defendant's employee, foreman A.J. McCoy ("McCoy"), fail to  
23 check the valves on the welding hoses on the left side of the truck in the closed cabinet when he  
24 went to the right side of work truck #59720 to turn on the tanks that were to be used for welding?  
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3. At the time of the incident, did foreman McCoy either fail to perform a “torch test” or fail to ensure a “torch test” was performed prior to operation of the welding torch?
4. At the time of the incident, did Defendant direct Plaintiff to utilize a hydraulic saw operator cutting mainline rail in order to repair rail defects?
5. At the time of the incident, did sparks from the hydraulic saw ignite the cabinet on the left side of work truck #59720 that was filled with gas to cause an explosion that blew the doors off the truck?
6. Did the force of the explosion cause the doors of work truck #59720 to land 60 feet away up the hill, break the saw and blow Plaintiff up and backward where he slammed down onto and between the rails covered in hydraulic fluid?
7. Did Plaintiff fail to utilize a spark shield prior to using the hydraulic saw to cut rail?
8. Did Plaintiff sustain or have aggravated the following injuries?
  - Right arm, two broken bones;
  - Severe pain and swelling in right arm;
  - Puncture wounds on right wrist;
  - Lower back injury with sciatic pain;
  - Severe back bruising;
  - Bilateral rib injury;
  - Right knee injury and pain;
  - Severe right leg pain, numbness, bruising and swelling;
  - Severe bruising and pain to entire right side of body;
  - Numbness in fingers and right hand;
  - Injury to right thumb;
  - Headaches;
  - Constant ringing in the ears;
  - Insomnia;
  - Post-traumatic stress;
  - Nightmares;
  - Confusion;
  - Dizziness; and
  - Emotional distress, among other issues.
9. Did all of the foregoing necessitate Plaintiff receive ongoing medical treatment and physical therapy?

1 10. Have Plaintiff's life activities been limited as a result of the injuries sustained in the incident  
2 (including fishing; shooting; limitations on his right side, including his dominant right hand;  
3 walking; sitting; standing; showering; and sleeping)?

4 11. Did Plaintiff suffer from preexisting conditions and/or injuries to his back, neck, hip and mental  
5 health prior to the subject incident?

6 12. Did Plaintiff fail to mitigate his damages by failing to seek medical treatment and/or follow  
7 medical advice, by abusing prescription drug medication, by failing to cooperate with UPRR's  
8 policies and procedures and unnecessarily incurring medical expenses, and by failing to  
9 participate in vocational rehabilitation and return to gainful employment.  
10

11 **VI.**

12 The following are the issues of law to be tried and determined at trial:  
13

14 The parties do not agree on what the contested issues of law are in the case.

15 Plaintiff submits that the contested issues of law are:

- 16 1. Did Union Pacific fail to use reasonable care under the circumstances to provide its employees  
17 with a reasonably safe place to work and with reasonably safe and suitable tools, machinery, and  
18 appliances?  
19 2. Could Union Pacific have reasonably foreseen that the particular condition could cause injury?  
20 3. Was Union Pacific's negligence a cause, no matter how small, of Althouse's harm?

21 Defendant submits that the contested issues of law are:

- 22 1. Could UPRR have reasonably foreseen the happening of the subject accident in the absence  
23 of evidence of prior incidents? (*Sears v. Southern Pacific Co.* (9<sup>th</sup> Circuit 1963) 313 F.2d  
24 498; *Holbrook v. Norfolk Southern Railway Co.* (7<sup>th</sup> Cir. 2005) 414 F.3d 739 (The railroad  
25 must have actual or constructive notice of the alleged dangerous condition); *Perry v. Morgan  
26 Guaranty Trust Co. of New York* (5<sup>th</sup> Cir. 1976) 528 F.2d 1378 (Jones Act case) (Absent  
27 evidence that in the exercise of reasonable care the employer had either the time or the  
28 opportunity to acquire knowledge of, or to correct, the dangerous condition, plaintiff cannot  
show negligence).)
2. Is UPRR entitled to an apportionment instruction consistent with *Sauer v. Burlington  
Northern R.R.*, 106 F.3d 1490 (10<sup>th</sup> Cir. 1996)?

3. Is Plaintiff's failure to provide medical progress reports and submit medical expenses to UPRR a failure to mitigate his damages under the FELA?

## VII.

- (a) The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

Stipulated Exhibit No.	Stipulated Exhibit Description	Party Offering
1	Report of Personal Injury or Occupational Illness	Plaintiff and Defendant
5	Plaintiff's W-2s	Plaintiff and Defendant
6	Plaintiff's Photographs of Incident Scene	Plaintiff
8	Pictures of the Incident Scene marked as Exhibit 3 to Deposition of Plaintiff Christopher Althouse	Plaintiff
7	Plaintiff's Photographs of Plaintiff's Injuries	Plaintiff
22	Union Pacific Rule 79.7, "Torch Test"	Plaintiff and Defendant
53	PowerPoint of Imaging Studies (Exhibit 5 to Dr. Garber's Deposition)	Plaintiff and Defendant
103	UPRR Photographs (UP Althouse 436-466)	Defendant
104	Oxy-Fuel Equipment Inspection Form (UP Althouse 467)	Defendant
126	Medical Illustration of Arm, Wrist, and Hand (Exhibit 3 to Walker Deposition)	Defendant

- (b) As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

In addition to the below, Plaintiff incorporates Defendant's exhibits to which objection has not been made and reserves the right to add additional exhibits.

Exhibit No.	Exhibit Description	Party Offering	Non-Offering Party Objection(s)
1	Report of Personal Injury or Occupational Illness	Plaintiff	Stipulated
2	Correspondence from Client with Railroad Retirement Board requesting Dr. Rogina's report.	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.

3	Plaintiff's Union Pacific Disability Documentation	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
4	Plaintiff's Out-of-Pocket Expense Receipts	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901. Failure to disclose. FRCP 26.
5	Plaintiff's W-2s	Plaintiff	Stipulated
6	Plaintiff's Photographs of Incident Scene	Plaintiff	Stipulated
7	Plaintiff's Photographs of Plaintiff's Injuries	Plaintiff	Stipulated
8	Pictures of the Incident Scene marked as Exhibit 3 to Deposition of Plaintiff Christopher Althouse	Plaintiff	Stipulated
9	Railroad Employee Injury and/or Illness Record marked as Exhibit 5 to Plaintiff's Deposition) UP Althouse 002214-00215)	Plaintiff	Inadmissible pursuant to 49 U.S.C. section 20903, 49 C.F.R. section 225.7(b)
10	Diagram of Incident marked as Exhibit 6 to Plaintiff's Deposition	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
11	Medical and billing records North Lyon County Fire Dept., 195 E. Main Street, Fernley, NV 89508 Obtained by Macropro (16 pages)	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
12	Medical and billing records from Reno Orthopaedic Clinic, Justin Walker, M.D., 555 N. Arlington Avenue, Reno, NV 89503	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
13	Medical and billing records from Renown Regional Medical Center, 1155 Mill Street, Reno, NV 89502-1576	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.

14	Medical and billing records from Renown Regional Medical Center, Emergency Physicians	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
15	Medical and billing records Reno Diagnostic Centers, 590 Eureka Avenue, Reno, NV 89512	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
16	Medical and billing records Nevada Pain and Spine Specialists, 605 Sierra Rose Drive, Suite 4 Reno, NV 89511	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
17	Medical and billing records Reno Orthopedic Surgery Center, 350 W. 6th Street, 3rd Floor, Reno, NV 89503	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
18	Medical and billing records Nevada Orthopedic Anesthesia Associates	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
19	Pharmacy and billing records from Wal-Mart Pharmacy, 2425 E. 2nd Street, Reno, NV 89502	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
20	Pharmacy and billing from Olsen Pharmacy, UP Althouse (005269-005270)	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
21	Medical and billing records from Lacy Fettic, M.D., University of Nevada, Reno, School of Medicine, Family Medicine Center – Reno, 123 17 St Ste 316 Reno, NV 89502	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
22	Medical and billing records from Concentra Medical Center, 255 Glendale Avenue, Suite 12, Sparks, NV 89431	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
23	Report of Justin Walker, M.D., Reno Orthopaedic Clinic	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.



24	Imaging from Reno Diagnostic Centers	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
25	Imaging from Reno Orthopaedic Clinic	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
26	Imaging from Renown Regional Medical Center	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
27	MRI Imaging of the Thoracic Spine without Contrast taken August 21, 2021, at Pueblo Imaging	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901. Failure to disclose in discovery. FRCP 26, 37.
28	Report of MRI of Thoracic Spine without Contrast taken August 12, 2021 at Pueblo Imaging	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
29	Withdrawn	Plaintiff	
30	Billing from Pueblo Imaging including but not limited to MRIs taken	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901. Failure to disclose in discovery. FRCP 26, 37.
31	Letter from RRB enclosing Report of Julius M. Rogina, Ph.D., Psychological Evaluation	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
32	Insurance Records from United Healthcare	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
33	Lien from RRB	Plaintiff	Relevant only post-trial; Relevance. Authentication.

			Hearsay. FRE 401, 403, 801, 901.
34	Lien from Hartford	Plaintiff	Relevant only post-trial; Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
35	Lien from Optum	Plaintiff	Relevant only post-trial; Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
36	Railroad Retirement Board Records (UP Althouse 003741-0003801)	Plaintiff	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
37	Union Pacific Rule 79.7, "Torch Test"	Plaintiff	Stipulated
38	Transcript of Recorded Interview of Aaron "A.J." McCoy (UP Althouse 000702-713)	Plaintiff	Hearsay. FRE 801.
39	Transcript of Recorded Interview of Josh Cornett (UP Althouse 000702-713)	Plaintiff	Hearsay. FRE 801.
40	CV of Mark Burns, BSME, JD, GC, CBI, CXLT, CPSI	Plaintiff	Demonstrative only. Hearsay. FRE 801.
41	Expert Report of Mark Burns, BSME, JD, GC, CBI, CXLT, CPSI	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
42	CV of Paul Broadus, MA	Plaintiff	Demonstrative only. Hearsay. FRE 801.
43	Expert Report of Paul Broadus, M.A.	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.

44	CV of Colby Young, M.D., M.B.A.	Plaintiff	Demonstrative only. Hearsay. FRE 801.
45	Expert Report of Colby Young, M.D., M.B.A.	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
46	Medical Illustrations of the Arm, Wrist and Hand	Plaintiff	Demonstrative only. Hearsay. FRE 801. Not produced so Defendants reserves the right to make other objections at trial.
47	Anatomical Illustrations of the Arm, Wrist and Hand	Plaintiff	Demonstrative only. Hearsay. FRE 801. Not produced so Defendants reserves the right to make other objections at trial.
48	Medical Illustration of Arm, Wrist, and Hand (Exhibit 3 to Walker Deposition)	Plaintiff	Stipulate
49	Expert Report of Jason Garber, M.D.	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
50	Expert File of Jason Garber, M.D. Produced as Report Viewer	Plaintiff	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.

51	Medical Illustrations of the Lumbar Spine	Plaintiff	Demonstrative only. Hearsay. FRE 801. Not produced so Defendants reserves the right to make other objections at trial.
52	Anatomical Illustrations of the Lumbar Spine	Plaintiff	Demonstrative only. Hearsay. FRE 801. Not produced so Defendants reserves the right to make other objections at trial.
53	PowerPoint of Imaging Studies (Exhibit 5 to Dr. Garber's Deposition)	Plaintiff	Stipulate
54	Plaintiff's Response to Interrogatories, Set One	Plaintiff	Relevance. Hearsay. FRE 801.
55	Plaintiff's Response to Request for Production, Set One	Plaintiff	Relevance. Hearsay. FRE 401, 801.
56	Plaintiff's Response to Request for Production, Set Two	Plaintiff	Relevance. Hearsay. FRE 401, 801.
57	Plaintiff's Response to Request for Production, Set Three	Plaintiff	Relevance. Hearsay. FRE 401, 801.
58	Plaintiff's Response to Request for Production, Set Four	Plaintiff	Relevance. Hearsay. FRE 401, 801.
<b>59-99</b>	<b>Plaintiff Reserves</b>	Plaintiff	
100	Althouse HR Report (UP Althouse 364-390)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
101	Althouse Human Factors Report (UP Althouse 1-16)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
102	Efficiency Test Report (UP Althouse 17)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.

103	UPRR Photographs (UP Althouse 436-466)	Defendant	Stipulate
104	Oxy-Fuel Equipment Inspection Form (UP Althouse 467)	Defendant	Stipulate
105	Oxy-Fuel Safety Alert (UP Althouse 468)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
106	UPRR General Code of Operating Rules, effective 1/6/18 (UP Althouse 1020-1260)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
107	UPRR Safety Rules, effective 9/19/18 (UP Althouse 1261-1475)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
108	UPRR Track Welding Rules and Procedures (UP Althouse 787-1019)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
109	UPRR Fire Prevention Plan (UP Althouse 715-752)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
110	Althouse Medical Comments (UP Althouse 776-781)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
111	Althouse EAP File (UP Althouse 4596-4538)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
112	Althouse Diagram (Exhibit 6 to Althouse Deposition)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
113	June 20, 2020 Letter from UPRR Workforce Resources to Althouse (Exhibit 11 to Althouse Deposition)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.

114	May 30, 2019 Medical Examination Questionnaire (Exhibit 12 to Althouse Deposition)	Defendant	
115	Chronological Pre-Incident Pain Questionnaires and Diagrams from Nevada Pain & Spine (Exhibit 13 to Althouse Deposition)	Defendant	
116	Chronological Post-Incident Pain Questionnaires and Diagrams from Nevada Pain & Spine (Exhibit 14 to Althouse Deposition)	Defendant	
117	Nevada Pain & Spine Encounters (Exhibit 2 to Berman Deposition)	Defendant	
118	Medical Records for Christopher Althouse in Chronological Order (Various subpoenaed records)	Defendant	Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
119	Walmart Pharmacy Records (UP Althouse 4070-4071)	Defendant	
120	List of Medical Expenses paid by UPRR and/or UPRR Provided Healthcare Plan	Defendant	. Relevance. Authentication. Hearsay. FRE 401, 403, 801, 901.
121	Imaging Studies of Althouse's Right Forearm	Defendant	
122	Imaging Studies of Althouse's Lumbar Spine	Defendant	
123	Imaging Studies of Althouse's Cervical Spine	Defendant	
124	Imaging Studies of Althouse's Right Hip	Defendant	
125	PowerPoint of Imaging Studies (Exhibit 5 to Dr. Garber's Deposition)	Defendant	Stipulate
126	Medical Illustration of Arm, Wrist, and Hand (Exhibit 3 to Walker Deposition)	Defendant	Stipulate

127	Vocational Report filled out by Althouse (UP Althouse 4925-4933)	Defendant	.
128	CV for Michael Klein, M.D.	Defendant	Hearsay. FRE 801.
129	Reports and Medical Records Review summaries prepared by Michael Klein, M.D. (various dates)	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
130	Medical Illustrations of the Upper Extremity	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
131	Anatomical Model of the Upper Extremity	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
132	Medical Illustrations of the Lumbar Spine	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
133	Anatomical Model of the Lumbar Spine	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
134	Medical Illustration of the Cervical Spine	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
135	Anatomical Model of the Cervical Spine	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
136	Medical Illustration of the Hip	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901

137	Anatomical Model of the Hip	Defendant	Hearsay. FRE 801. Lacks foundation. FRE 901
138	CV for Vincent Filoteo, PhD.	Defendant	Hearsay. Relevance. Authentication. FRE 401, 403, 801, 901
139	Neuropsychological Evaluation prepared by Vincent Filoteo, PhD dated August 25, 2021	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
140	Supplemental Report of Vincent Filoteo, PhD dated February 24, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
141	CV for Amy Koellner	Defendant	Hearsay. Relevance. Authentication. FRE 401, 403, 801, 901
142	Vocational Evaluation Report by Amy Koellner dated February 24, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
143	Rebuttal Report by Amy Koellner dated March 24, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.



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2	144	CV for Peter Wrobel, CPA/ABV, CFE	Defendant	Hearsay. Relevance. Authentication. FRE 401, 403, 801, 901
3	145	Report of Peter Wrobel dated February 24, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
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8	146	Rebuttal Report of Peter Wrobel dated March 25, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
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10				
11				
12				
13	147	CV for David Rondinone, PhD, P.E	Defendant	Hearsay. Relevance. Authentication. FRE 401, 403, 801, 901
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15	148	Report of David Rondinone, dated February 24, 2022	Defendant	Relevance. Authentication. Hearsay. Lacks foundation. Improper Expert Opinion. FRE 401, 403, 701, 801, 901.
16				
17				
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19				

(c) Electronic exhibits for purposes of jury deliberation:

Exhibit No.	Exhibit Description	Party Offering	Non-Offering Party Objection(s)

(d) Depositions:

(i) Plaintiff will offer the following depositions:

Name	Page/Line	Party Against Whom Offered
A.J. McCoy	5:12-5:16 7:21-10:21 11:11-16:2 17:6-18:18 19:23-20:13 21:6-26:18 27:3-30:21 31:20-33:16 34:24-47:11 47:23-61:25	
Steven E. Berman, M.D.	5:15-5:20 6:19-6:25 7:4-10:22 11:3-11:16 11:18-12:6 14:4-14:7 14:19-14:23 17:12-17:19 20:6-21:6 21:10-22:11 23:19-24:16 25:24-27:10 28:5-29:13 30:2-31:13 32:7-35:17 36:3-37:14 38:14-38:18 39:15-40:13 40:19-42:13 43:1-44:10 44:15-44:17 44:22-45:14 47:3-48:17 50:3-52:15 53:3-53:19 54:19-56:25 60:14-61:25 65:3-65:6 65:21-66:2 67:2-68:24	

	69:16-72:9 73:3-81:24 82:11-86:11 87:19-96:10 102:7-103:8 105:23-108:14	
Lacy Fetic, M.D.	5:18-6:4 9:4-9:8 10:24-11:2 11:8-13:23 14:7-14:17 15:21-16:8 17:24-20:6 20:22-21:12 21:25-23:2 23:20-24:3 25:17-26:22 27:18-28:15 29:3-29:5 29:13-29:17 33:19-35:12 36:5-36:20 40:11-42:7 42:19-44:5 45:22-46:2 46:25-47:5 48:21-49:21 52:23-53:23 55:14-56:13 56:25-57:4 58:1-58:2 58:13-58:14 58:19-58:22 60:12-60:22 63:13-64:2 65:25-66:4 66:18-67:1 68:23-69:9 74:6-74:17 74:20-75:14 79:20-80:14	
Julius M. Rogina, Ph.D.	7:13-8:7 8:19-9:9 10:2-10:9 10:19-11:13 14:25-15:2	

1		16:8-17:12	
2		18:7-23:6	
3		23:14-24:14	
4		25:8-25:16	
5		28:7-30:18	
6		30:24-36:9	
7		36:17-39:23	
8		40:11-41:14	
9		42:1-51:21	
10		52:8-54:5	
11		56:6-58:25	
12		61:13-64:1	
13		72:19-75:2	
14		75:15-76:1	
15		79:25-80:25	
16		81:24-82:25	
17		93:12-94:13	
18		96:22-97:16	
19	Elizabeth Kiehn, APRN	5:9-5:14	
20		7:13-7:17	
21		8:2-8:5	
22		10:7-13:8	
23		15:4-15:15	
24		17:1-17:16	
25		18:1-18:2	
26		19:1-19:12	
27		22:9-24:20	
28		27:15-27:20	
		28:1-30:40	
		31:1-31:4	
		32:3-33:11	
		34:14-35:16	
		39:1-39:13	
		40:13-42:2	
		43:4-43:18	
		47:1-49:17	
		50:1-50:11	
		50:22-52:3	
		55:9-56:20	
		73:12-74:2	
		75:12-75:25	
		79:16-81:5	
		81:14-81:15	
		81:23-84:8	
		84:15-86:2	
		87:24-89:5	

	90:1-90:15 92:9-93:19 94:7-94:11 95:8-95:23 96:8-97:4 97:24-98:25 103:8-103:17	
Justin Walker, M.D.	8:13-11:12 11:18-14:2 15:1-15:15 15:23-18:5 19:5-19:19 20:6-20:13 20:19-20:23 21:1-21:10 25:18-25:21 26:3-31:3 31:21-34:9 34:21-40:10 41:16-52:10 52:21-66:18 67:24-79:9 81:15-82:16 84:21-85:25 87:3-89:7 92:22-93:1 93:14-93:17 94:11-100:5 100:23-111:25 112:16-114:10 115:2-117:4	

(ii) Defendant will offer the following depositions:

Name	Page/Line	Party Against Whom Offered
Dr. Steven Berman	5:5-18, 6:19-9:19 10:12-11:13 12:13-13:10 13:17-14:11 14:20-16:7 16:12-17:19	Plaintiff

1	18:16-19:23 (stop after “That is correct.”) is it 19:25?	
2	20:1-12	
3	20:14-21:6	
4	21:10-23:12	
5	23:19-24:16	
6	24:24-26:1	
7	26:23-27:7	
8	27:9-10	
9	28:5-20	
10	29:21-32:16	
11	34:9-18	
12	36:3-37:3	
13	38:4-42:1	
14	42:20-43:9	
15	43:21-46:16	
16	47:3-49:6	
17	50:3-52:6	
18	52:8-53:7	
19	53:9-53:15	
20	53:17-54:17	
21	54:19-55:7	
22	55:9-20	
23	55:22-56:3	
24	56:5-10	
25	56:24-58:7	
26	58:21-23	
27	58:25-61:25	
28	62:4-22	
	62:24-63:15	
	64:12-65:6	
	75:8-11	
	76:16-21	
	90:4-91:25	
	105:5-22	
	107:24-108:4	
	108:5-14	
	Dr. Lacy Fetic	Plaintiff
	5:9-24	
	10:11-20	
	11:8-13:16	
	14:13-24	
	15:21-22	
	16:5-8	
	17:24-19:21	
	20:7-21:2	
	29:3-25	

	33:19-34:23 37:22-38:7 41:4-42:8 43:10-14 44:23-45:6 46:23-47:16 48:21-49:8 51:5-8 57:11-25 78:8-21	
Elizabeth Kiehn, APRN	5:3-6 8:7-13 10:7-17:12 18:1-19:12 20:1-26:13 27:2-38:10 38:13-43:24 44:2-46:14 47:1-51:12 51:20-53:11 53:13-63:3 64:2-6 64:8-11 64:13-21 64:23-25 65:2-7 65:9-14 65:16-18 65:20-21 66:2-3 66:5-15 66:17-19 66:21-67:1 67:3-10 67:12-14 67:18-68:9 68:11-17 69:13-74:2 75:17-77:16 83:2-25 107:6-21 107:23-108:11	Plaintiff
Julius M. Rogina, Ph.D.	7:7-8:1 23:17-24:11 25:17-26:2 28:23-29:7	Plaintiff

1		30:2-18	
2		60:14-61:2	
3		61:9-12	
4		63:1-12	
5		63:14-15	
6		66:3-6	
7		70:7-71:4	
8		71:15-75:7	
9		75:10-76:5	
10		76:22-78:7	
11		81:12-82:9	
12		82:20-25	
13		83:9-84:5	
14		84:14-25	
15		85:5-10	
16		85:13-91:12	
17		91:15-93:9	
18		93:12-94:6	
19		94:11-95:1	
20		104:10-21.	
21	Justin Walker, M.D.	7:6-8	Plaintiff
22		8:18-23	
23		9:2-11:12	
24		11:22-14:2	
25		16:3-20:13	
26		21:1-25:4	
27		25:18-40:10	
28		42:22-63:6	
		63:9-72:3	
		72:7-79:9	
		80:11-82:16	
		83:14-18	
		84:6-10	
		84:21-86:7	
		86:16-18	
		86:21-90:6	
		90:8-13	
		90:15-18	
		91:7-8	
		91:10-21	
		92:1-93:1	
		117:14-118:14	

(e) Objections to depositions:



(i) Plaintiff objects to Defendant's depositions as follows:

Name	Page/Line & Objections
Steven Berman, M.D.	<p><u>Objection to 14:8-11</u>: Calls for speculation (based on testimony at 14:13-19).</p> <p><u>Objection to 14:24-16:20</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 19:1-19:17</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 20:6-12</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound</p> <p><u>Objection to 20:14-21:6</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 22:21-23"12</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 20:6-12</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 20:6-12</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; question with no answer (25:24-26:1)</p> <p><u>Objection to 26:23-27:7</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time</p> <p><u>Objection to 27:9-10</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p>

Objection to 29:21-29:25: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; vague and ambiguous; question misstates the law as to FELA/“work-related injury”; reference to Workers’ Compensation applicability issue

Objection to 31:14-32:6: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time

Objection to 51:2-3 “and the obvious litigation that goes along with this”: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; hearsay

Objection to 52:3-6 and 52:8-53:2: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; hearsay; misstates the testimony

Objection to 53:12-15: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; vague and ambiguous; compound; leading

Objection to 53:17-19: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; vague and ambiguous; nonresponsive

Objection to 55:5-14: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; vague and ambiguous; leading; nonresponsive

Objection to 58:21-23: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound; vague and ambiguous; calls for speculation; lack of foundation

Objection to 62:19-63:4: Speculation; relevance; probative value substantially outweighed by unfair prejudice, confusing

	<p>the issues, misleading the jury, undue delay and wasting time; improper expert testimony; lacks foundation.</p> <p><u>Objection to 105:5:22</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p> <p><u>Objection to 105:5:22</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p>
Dr. Lacy Fetic	<p><u>Objection to 14:18-24</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation.</p> <p><u>Objection to 19:17-20:6</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; speculative; lack of foundation.</p> <p><u>Objection to 37:22-38:7</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p> <p><u>Objection to 44:23-45:6</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p>
Elizabeth Kiehn, APRN	<p><u>Objection to 13:18-14:13</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p> <p><u>Objection to 20:1-21:4</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p> <p><u>Objection to 36:2-15</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p> <p><u>Objection to 38:8-10</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound; calls for speculation; calls for hearsay.</p>

Objection to 38:13-14: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound; speculation; hearsay.

Objection to 43:19-24: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound; calls for speculation.

Objection to 44:2-45:10: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound; calls for speculation.

Objection to 52:23-53:11: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound.

Objection to 53:13-14: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound.

Objection to 53:24-60:4: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound.

Objection to 61:10-63:3: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; compound.

Objection to 64:2-6: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 64:8-11: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 64:13-21: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 64:23-25: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 65:2-7: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 65:9-14: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 65:16-18: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 65:20-21: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 66:2-3: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 66:5-15: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 66:17-19: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 66:21-67:1: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 67:3-10: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.

Objection to 67:12-14: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; speculation; lack of foundation.

	<p><u>Objection to 67:18-68:9:</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; speculation; lack of foundation.</p> <p><u>Objection to 69:19-70:6:</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time.</p>
Julius M. Rogina, Ph.D.	<p><u>Objection to 61:9-12:</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation</p> <p><u>Objection to 70:7-71:4-</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 71:15-75:7-</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 81:12-23-</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 83:9-84:5-</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 84:14-25:</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 85:5:10:</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 85:13-91:12-</u> Relevance; probative value substantially outweighed by unfair prejudice, confusing the</p>

	<p>issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 91:15-93:9</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 94:11-95:1</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p> <p><u>Objection to 104:10-21</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; calls for speculation; calls for hearsay.</p>
Justin Walker, M.D.	<p><u>Objection to 90:4-6</u>: Compound; overbroad; vague and ambiguous.</p> <p><u>Objection to 90:8-13</u>: Compound; overbroad; vague and ambiguous; speculative; lacks foundation.</p> <p><u>Objection to 90:15-18</u>: Compound; overbroad; vague and ambiguous; misleading; lacks foundation.</p> <p><u>Objection to 91:7-8</u>: Compound; overbroad; vague and ambiguous; misleading; calls for speculation.</p> <p><u>Objection to 90:15-18</u>: Speculation; lacks foundation.</p> <p><u>Objection to 117:14-18</u>: Relevance; probative value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time; speculation; lack of foundation; compound.</p>

(ii) Defendant objects to Plaintiff's depositions as follows:

Name	Page/Line & Objections
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<p>A.J. McCoy</p>	<p>General objection to use of McCoy's deposition transcript at trial as he is not an officer, director, managing agent or designee for purpose of FRCP 32(a)(3).  5:12-5:16: Relevance. FRE 401.  7:21-8:12: Relevance. FRE 401.  19:23-20:13 and Exhibit 1: Relevance, hearsay. FRE 401, 801.  21:6-18: Relevance, more prejudicial than probative. FRE 401, 403.  35:12-18: Lacks foundation, speculation. FRE 601-602.  Opinion on an ultimate issue. FRE 704.  36:15-20: Lacks foundation, speculation. FRE 601-602.  42:23-43:10: Lacks foundation, speculation, improper lay opinion, unqualified and improper expert opinion. FRE 601-602, 701-702.  43:12-21: Hearsay. Speculation. FRE 601-601, 801.  43:23-44:3: Lacks foundation, speculation, improper lay opinion, unqualified and improper expert opinion. FRE 601-602, 701-702.  44:5-8: Hearsay. Speculation. FRE 601-601, 801.  44:23-45:7: Hearsay. Speculation. FRE 601-601, 801.  45:13-17: Hearsay. Speculation. FRE 601-601, 801.  48:21-49:11: Lacks foundation, speculation, improper lay opinion. FRE 601-602, 701.  51:4-12: Relevance. FRE 401.  53:8-13: Lacks foundation, speculation, improper lay opinion, unqualified and improper expert opinion. Hearsay. FRE 601-602, 701-702, 801.  54:23-55:10: Hearsay. FRE 801.  55:12-57:9: Lacks foundation, speculation, improper lay opinion, unqualified and improper expert opinion. Hearsay.  Subsequent remedial measures. FRE 407, 601-602, 701-702, 801.  58:2-6: Lacks foundation, speculation, improper lay opinion, unqualified and improper expert opinion. FRE 601-602, 701-702.  Counter designate: 62:5-64:1.</p>
<p>Steven E. Berman, M.D.</p>	<p>26:2: Remove objection.  28:21-13: Reference to workers compensation and insurance is irrelevant and more prejudicial than probative. FRE 401, 403.  32:17-34:8: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.  34:19-17: Reference to insurance and losing his insurance is irrelevant and more prejudicial than probative. FRE 401, 403.  Question at 35:17 does not include the answer.</p>



	<p>37:4-14: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>67:2-68:16: Reference to workers compensation and FELA irrelevant and more prejudicial than probative. Speculation regarding what Mr. Althouse believed. FRE 401, 403, 601-602.</p> <p>71:9-15: Relevance and more prejudicial than probative. FRE 401, 403.</p> <p>71:22-72:9: Lacks foundation, speculation. FRE 601-602.</p> <p>73:24-74:14: Lacks foundation, speculation. FRE 601-602.</p> <p>74:15-75:7: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>75:12-76:15: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>77:6-79:23: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>83:1-4: Lacks foundation, speculation. FRE 601-602.</p> <p>88:14-23: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>92:1-95:15: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p> <p>96:7-10: Improper character evidence. Relevance. More prejudicial than probative. FRE 401, 403, 404.</p> <p>105:23-107:23: Lacks foundation, speculation, unqualified and improper expert opinion. FRE 601-602, 701-702.</p>
Lacy Fetic, M.D.	<p>13:17-22: No question and answer.</p> <p>19:22-23 &amp; 20:1-2: Objections should be removed.</p> <p>22:20-23: Objections should be removed.</p> <p>26:16-17: Objections should be removed.</p> <p>27:1-2 &amp; 28:10-12: Objections should be removed.</p> <p>43:23-44:5: Objections should be removed and no substantive answer given.</p> <p>45:23-46:2: No substantive answer given. Line 2 is not part of the answer.</p> <p>52:23-53:23, 55:14-56:13, 56:25-57:4: Plaintiff has conceded no claim is being made for traumatic brain injury so this testimony is irrelevant and prejudicial. No foundation, unqualified and improper expert opinion. FRE 401, 403, 701.</p> <p>55:25-56:1: Objection should be removed.</p> <p>74:6-17, 74:20-75:14: Plaintiff has conceded no claim is being made for traumatic brain injury so this testimony is irrelevant and prejudicial. No foundation, unqualified and improper expert opinion. FRE 401, 403, 701.</p> <p>79:20-80:14: No foundation, unqualified and improper expert opinion.</p>
Elizabeth Kiehn, APRN	85:15-86:2: Lacks foundation, speculation. FRE 601-602.

	88:16-89:5: Relevance, undue consumption of time. FRE 401, 403. 93:14-19: Continue to 93:20-22 under the rule of completeness. 94:7-11: No substantive response to question posed.
Justin Walker, M.D.	15:1-15: Hearsay. FRE 801. 41:16-42:21: Relevance. FRE 401. 94:15-97:12: Lacks foundation, speculation, improper opinion. FRE 601-602, 702. 97:13-98:13: Lacks foundation, speculation. FRE 601-602. 99:25-100:5: Relevance. FRE 401. Medical expenses paid by railroad employer or employer paid medical are not recoverable under the FELA. 45 U.S.C. § 55, <i>Folkestad v. Burlington Northern, Inc.</i> , 813 F.2d 1377 (9 <sup>th</sup> Cir. 1987). 100:23-101:5: Hearsay. FRE 801. 107:11-108:10: Lacks foundation, speculation, improper opinion. FRE 601-602, 702. 108:16-23: Relevance. More prejudicial than probative. Lacks foundation, speculation, improper opinion. FRE 401, 403, 601-602, 702. 108:24-109:3: Lacks foundation, speculation, improper opinion. FRE 601-602, 702. 109:10-111:5: Lacks foundation, speculation, improper opinion. FRE 601-602, 702. 112:16-113:8: Lacks foundation, speculation, improper opinion. FRE 601-602, 702. 113:19-117:4: Hearsay. FRE 801.

### VIII.

The following witness may be called by the parties at trial:

(a) Provide names/addresses of Plaintiff's witnesses:

Names of Plaintiff's Witnesses	Address of Plaintiff's Witnesses
<b>Via Deposition Testimony:</b>	
Aaron J. McCoy, UPRC, Track Foreman	13181 Crossroads Parkway North, Suite 500, City of Industry, CA 91746
Steven E. Berman, M.D.	Nevada Pain & Spine Specialists, 605 Sierra Rose Drive, Suite 4, Reno, NV 89511
Lacy Feticc, M.D.	University of Nevada, Reno, School of Medicine, Family Medicine Center – Reno, 1664 N. Virginia Street UNR Brigham Bldg, Mailstop 316, Reno, NV 89557

Julius M. Rogina, Ph.D.	1270 Wakefield Trail, Reno, NV 89523-9718
Elizabeth Kiehn, APRN	1330 Crosswater Drive, Reno, NV 89523
Justin Walker, M.D.	Reno Orthopaedic Clinic, 555 North Arlington Avenue, Reno, NV 89503
<b>Via Live Testimony:</b>	
Christopher Althouse	c/o James A. Morris, Jr., Brent Coon & Associates, 4001 W. Alameda Avenue Suite 208, Burbank, CA 91505
Gail Althouse	741 Canary Circle, Fernley, NV 89408
Cameron Pulsifer, UPRC, Manager Track and Maintenance	13181 Crossroads Parkway North, Suite 500, City of Industry, CA 91746
Mike Upton, UPRC	13181 Crossroads Parkway North, Suite 500, City of Industry, CA 91746
Mark J. Burns, BSME, JD, GC, CBI, CXLT, CPSI	Aperture LLC/Wexco 1730 E. Holly Avenue, Suite 720, El Segundo, CA 90245
Jason E. Garber, M.D.	Center for Spine and Brain Surgery, 3012 South Durango Drive, Las Vegas, NV 89117
Colby P. Young, M.D.	HandSurgery Specialists of Nevada, 9321 W. Sunset Road, Las Vegas, NV 89148
Paul Broadus, M.A.	Broadus & Associates, 112 N. Harvard Avenue, #221, Claremont, CA 91711
Jeffrey B. Opp, Economist	Opp & Company, Inc., 399 Perry Street, Suite 201, Castle Rock, CO 80104

(b) Provide names/addresses of Defendant's witnesses:

<b>Names of Defendant's Witnesses</b>	<b>Addresses of Defendant's Witnesses</b>
<i>Via Deposition Testimony</i>	
Steven E. Berman, MD	Nevada Pain & Spine Specialists, 605 Sierra Rose Drive, Suite 4, Reno, NV 89511
Lacy Fetic, MD	Humboldt General Hospital, 118 E. Haskell Street, Winnemucca, NV 89445
Elizabeth Kiehn, APRN	Travelling Triggers, 3636 Mayberry Drive, Suite 102, Reno, NV 89509
Julius Rogina, Ph.D.	1270 Wakefield Trail, Reno, NV 89523
Justin Walker, MD	Reno Orthopedic Clinic, 555 North Arlington Avenue, Reno, NV 89503
<i>Via Live Testimony</i>	
Mark Allen	UPRR Director of Track Construction, Southern Region HQ, 24125 Aldine Westfield Road, Spring, TX 77373

Christopher Althouse	c/o James A. Morris, Jr., Brent Coon & Associates, 4001 W. Alameda Avenue Suite 208, Burbank, CA 91505
Gail Althouse	741 Canary Circle, Fernley, NV 89408
Joshua Cole Cornett	UPRR Ballast Tamer Operator Multit, 999 E 16 <sup>th</sup> St., Tucson, AZ 85701
Angela Craik	UPRR Risk Management Representative, 9451 Atkinson Street, Roseville, CA 95747
J. Vincent Filoteo, Ph.D.	VA San Diego Healthcare System, Psychology Service 116-B, 3350 La Jolla Village Dr., La Jolla, CA 92136
Michael R. Klein, Jr., M.D., F.A.C.S.	MRK Medical Consultants, 11249 Gold Country Blvd., Suite 165, Gold River, CA 95670
Amy Koellner, MS, ABVE, CRC, LPCC-LPC	Career Counseling & Consulting, 4647 Long Beach Blvd., Suite D10, Long Beach, CA 90805
Greg Haney	UPRR Manager II MOW, Nephi, UT
Scott Lauby	UPRR Sr. Manager, Track Welding, 1400 Douglas St., Omaha, NE 68179
Aaron J. McCoy	UPRR Ballast Tamer Operator Switch, Gerlach, NV
Cameron Pulsifer	UPRR Manager I Track Maintenance, 1 South Pyramid Way, Sparks, NV 89431
David Rondinone, Ph.D., P.E.	Principal Mechanical Engineer, Berkeley Engineering and Research, Inc., 808 Gilman Street, Berkeley, CA 94710
Mike Upton	UPRR Sr. Manager, Track Maintenance, 1 South Pyramid Way, Sparks, NV 89431
Peter D. Wrobel, CPA/APV, CFE	Berkeley Research Group, 550 South Hope Street, Suite 2150, Los Angeles, CA 90071

## IX.

The attorneys or parties have met and jointly offer these three trial dates: March 30, 2023; April 3, 2023; April 17, 2023.

It is expressly understood by the undersigned that the Court will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the Court's calendar.

It is estimated that the trial will take a total of 7-12 days.

## X.

1 No motions in limine have been filed at this time. Pursuant to LR 16-3(a), motions in limine are due  
2 filed 30 days prior to trial, unless the Court orders otherwise. Plaintiff is still considering those motions  
3 in limine to be filed and is engaging in ongoing meet and confer with Defendant, but submits the  
4 following tentative list:

- 5 1. Exclude evidence Plaintiff attended substance rehabilitation prior to the incident (including but  
6 not limited to at Elizabeth Kiehn, APRN, deposition transcript, p. 97; irrelevant, FRE 401, 402;  
7 probative value substantially outweighed by unfair prejudice, confusing the issues, misleading  
8 the jury, undue delay and wasting time, FRE 403.)
- 9 2. Exclude Michael R. Klein, Jr., M.D., expert opinions regarding spinal issues (expert unqualified  
10 in the specialty, FRE 702).
- 11 3. Exclude evidence regarding Plaintiff's usage of alcohol, including "nine pints daily" (including  
12 but not limited to at Steven Berman, M.D., deposition transcript, p. 81, and Lacy Fetic, M.D.,  
13 deposition transcript, p. 14, 30-32, 37-39; Elizabeth Kiehn, APRN, deposition transcript, p. 84,  
14 97; irrelevant, FRE 401, 402; probative value substantially outweighed by unfair prejudice,  
15 confusing the issues, misleading the jury, undue delay and wasting time, FRE 403.)
- 16 4. Exclude evidence regarding allegations Plaintiff was verbally abusive to wife (including but not  
17 limited to at Steven Berman, M.D., deposition transcript, pp. 52, 96; irrelevant, FRE 401, 402;  
18 probative value substantially outweighed by unfair prejudice, confusing the issues, misleading  
19 the jury, undue delay and wasting time, FRE 403.)
- 20 5. Exclude evidence regarding pain medication overuse, including "opioid dependence" (including  
21 but not limited to at Steven Berman, M.D., deposition transcript, pp. 18-22, 86, 96; Elizabeth  
22 Kiehn, APRN, deposition transcript, pp. 36, 43-45, 50, 98; irrelevant, FRE 401, 402; probative  
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1 value substantially outweighed by unfair prejudice, confusing the issues, misleading the jury,  
2 undue delay and wasting time, FRE 403.)

- 3 6. Exclude evidence regarding impact of litigation on patients (including but not limited to at Steven  
4 Berman, M.D., deposition transcript, pp. 98-99; *Daubert v. Merrell Dow Pharmaceuticals Inc.*,  
5 509 U.S. 579 (1993); irrelevant, FRE 401, 402; probative value substantially outweighed by  
6 unfair prejudice, confusing the issues, misleading the jury, undue delay and wasting time, FRE  
7 403.)  
8
- 9 7. Exclude evidence regarding tobacco usage, as well as the alleged impact of tobacco usage on  
10 healing (including but not limited to at Lacy Fetic, M.D., deposition transcript, p. 30; Elizabeth  
11 Kiehn, APRN, deposition transcript, p. 84; Justin Walker, M.D., deposition transcript, pp. 40-41  
12 (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993); irrelevant, FRE 401, 402;  
13 probative value substantially outweighed by unfair prejudice, confusing the issues, misleading  
14 the jury, undue delay and wasting time, FRE 403.)  
15
- 16 8. Exclude evidence regarding urine drug screening during medical visits (including but not limited  
17 to at Elizabeth Kiehn, APRN, deposition transcript, pp. 13-14, 20; irrelevant, FRE 401, 402;  
18 probative value substantially outweighed by unfair prejudice, confusing the issues, misleading  
19 the jury, undue delay and wasting time, FRE 403.)  
20
- 21 9. Exclude evidence regarding Plaintiff's receipt of or entitlement to receive benefits of any kind  
22 from a collateral source and to prohibit any set-off against the FELA award (collateral source  
23 rule; irrelevant, FRE 401, 402.)  
24

25 Defendant intends to file the following motions in limine:

- 26 1. Exclude untimely and improper opinions of Plaintiff's vocational expert Paul Broadus. (FRCP  
27 26, 37; *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)  
28

2. Exclude improper opinions of Psychologist, Dr. Julius Rogina. (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)
3. Exclude untimely and improper opinions of Plaintiff's medical expert Dr. Young. (FRCP 26, 37; *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)
4. Exclude untimely and improper opinions of Plaintiff's medical expert Dr. Garber including opinions based on MRI studies not produced in discovery. (FRCP 26, 37; *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)
5. Exclude speculative opinions of Plaintiff's treating pain management physician Dr. Berman regarding medication abuse post-incident. (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)
6. Exclude improper opinions of Plaintiff's liability expert Burns. (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)
7. Preclude Plaintiff from seeking damages for past medical expenses paid by his employer or employer paid health plan or not submitted for payment. (45 U.S.C. § 55, *Folkestad v. Burlington Northern, Inc.*, 813 F.2d 1377 (9th Cir.1987); *Varhol v. National Railroad Passenger Corporation*, 909 F.2d 1557 (7th Cir. 1990), *Muzzleman v. National Rail Passenger Corporation*, 839 F. Supp. 1094 (D. Del. 1993); *Jones v. Consol. Rail Corp.*, 800 F.2d 590 (6th Cir. 1986).)
8. Exclude any evidence regarding Plaintiff suffering from a traumatic brain injury. (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993).)

1 APPROVED AS TO FORM AND CONTENT:

2 /s/ James A. Morris, Jr.

3 James A. Morris  
4 Signature of Attorney for Plaintiff CHRISTOPHER ALTHOUSE

5 /s/ Stephanie Quinn

6 Stephanie Quinn  
7 Signature of Attorney for Defendant UNION PACIFIC RAILROAD COMPANY

8 **XI.**

9 ORDER:

10 This case is set for Court jury trial on the stacked calendar on Monday, April 3, 2023 at 8:30A.M.

11 Calendar call will be held on Thursday, March 23, 2023 at 1:30PM.

12 IT IS FURTHER ORDERED that this matter is referred to U.S. Magistrate Judge Craig S. Denney for a  
13 settlement conference.

14 IT IS SO ORDERED.

15 DATED: August 16, 2022

16 

17 LARRY R. HICKS  
18 UNITED STATES DISTRICT JUDGE  
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